

**SENATE BILL 550**  
**EMERGENCY BILL**

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2004 Regular Session  
4r2348

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By: **Senators Harris and Hollinger**

Introduced and read first time: February 6, 2004

Assigned to: Education, Health, and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Health - General - Nursing Referral Service Agencies - Licensing**

3 FOR the purpose of exempting certain nursing referral service agencies and certain  
4 nurse registries from certain definitions; providing for the scope of this Act;  
5 requiring the Department of Health and Mental Hygiene to adopt certain  
6 regulations; requiring the regulations to provide for the establishment of certain  
7 agencies, the qualifications for licensure as certain agencies, the issuance of  
8 certain licenses, the renewal of certain licenses, and a procedure for the  
9 investigation of certain complaints; providing for the expiration of certain  
10 licenses under certain circumstances; authorizing the Department to issue,  
11 deny, suspend, or revoke certain licenses; requiring the Department to set  
12 certain fees; requiring certain individuals to be licensed before operating certain  
13 agencies; requiring certain applicants to meet certain requirements; requiring  
14 certain agencies to develop and implement certain procedures relating to the  
15 screening of certain licensed health professionals; requiring certain agencies to  
16 notify certain licensed health professionals and certain clients of certain  
17 complaint procedures; prohibiting certain agencies from maintaining certain  
18 relationships with certain licensed health professionals; exempting certain  
19 agencies from the payment of certain compensation; authorizing the  
20 Department to inspect certain agencies; prohibiting certain individuals from  
21 operating certain agencies under certain circumstances; providing for certain  
22 penalties for certain violations; defining certain terms; making this Act an  
23 emergency measure; and generally relating to nursing referral service agencies.

24 BY repealing and reenacting, with amendments,  
25 Article - Business Regulation  
26 Section 9-101(d)  
27 Annotated Code of Maryland  
28 (1998 Replacement Volume and 2003 Supplement)

29 BY repealing and reenacting, with amendments,  
30 Article - Health - General  
31 Section 19-401(c) and 19-4A-01(e)  
32 Annotated Code of Maryland

1 (2000 Replacement Volume and 2003 Supplement)

2 BY adding to

3 Article - Health - General

4 Section 19-4B-01 through 19-4B-09, inclusive, to be under the new subtitle

5 "Subtitle 4B. Nursing Referral Service Agencies"

6 Annotated Code of Maryland

7 (2000 Replacement Volume and 2003 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article - Business Regulation**

11 9-101.

12 (d) (1) "Employment agency" means a person who, for a fee:

13 (i) obtains, offers to obtain, or attempts to obtain:

14 1. an employee for a person who seeks an employee; or

15 2. employment for a client;

16 (ii) provides to a client information to enable the client to obtain  
17 employment;

18 (iii) obtains, offers to obtain, or attempts to obtain employment or  
19 an engagement in connection with an entertainment, exhibition, or performance,  
20 including:

21 1. a ballet;

22 2. a circus;

23 3. a concert;

24 4. the legitimate theater;

25 5. modeling;

26 6. a motion picture;

27 7. an opera;

28 8. a phonograph recording;

29 9. the radio;

30 10. a transcription;

- 1 11. television;
- 2 12. the variety field; or
- 3 13. vaudeville; or
- 4 (iv) 1. obtains, offers to obtain, or attempts to obtain an alien  
5 labor certification or immigrant visa for an individual; and
- 6 2. participates directly or indirectly in the recruitment or  
7 supply of an individual who resides outside of the continental United States for  
8 employment in the continental United States.

- 9 (2) "Employment agency" does not include a person who merely:
- 10 (i) conducts a business that directly employs individuals to provide  
11 part-time or temporary services to another person;
- 12 (ii) as a lawyer, directly obtains an immigrant visa for an  
13 individual; [or]
- 14 (iii) conducts a business that:
- 15 1. receives a fee that is paid wholly by an employer;
- 16 2. does not collect money from an individual seeking  
17 employment; and
- 18 3. does not require an individual seeking employment to  
19 make a contract; OR

20 (IV) OPERATES A NURSING REFERRAL SERVICE AGENCY THAT IS  
21 LICENSED UNDER TITLE 19, SUBTITLE 4B OF THE HEALTH - GENERAL ARTICLE.

22 **Article - Health - General**

23 19-401.

24 (c) (1) "Home health care" means any of the following services that are  
25 provided under the general direction of a licensed health professional practicing  
26 within the scope of their practice act:

- 27 (i) Audiology and speech pathology;
- 28 (ii) Dietary and nutritional services;
- 29 (iii) Drug services;
- 30 (iv) Home health aid;
- 31 (v) Laboratory;

- 1 (vi) Medical social services;
- 2 (vii) Nursing;
- 3 (viii) Occupational therapy;
- 4 (ix) Physical therapy; OR
- 5 (x) Provision of medically necessary sickroom equipment and  
6 supplies[; or
- 7 (xi) A nurse registry that is an employment agency under the  
8 provisions of the Maryland Employment Agency Act].

9 (2) However, the provisions of this subsection do not apply to:

10 (I) A NURSING REFERRAL SERVICE AGENCY THAT IS LICENSED AS  
11 A NURSING REFERRAL SERVICE AGENCY UNDER THE PROVISIONS OF SUBTITLE 4B  
12 OF THIS TITLE; OR

13 (II) [a] A home-based hospice care program that is licensed as a  
14 home-based hospice care program under the provisions of Subtitle 9 of this title.

15 (3) A home health agency shall also be licensed as a hospice care  
16 program if the home health agency operates a hospice care program that is distinct  
17 from its other services.

18 19-4A-01.

19 (e) (1) "Residential service agency" means any person that is engaged in a  
20 nongovernmental business of employing or contracting with individuals to provide  
21 home health care for compensation to an unrelated sick or disabled individual in the  
22 residence of that individual.

23 (2) "Residential service agency" includes[:

24 (i) Any] ANY agency that employs or contracts with individuals  
25 directly for hire as home health care providers[; or

26 (ii) A nurse registry that is an employment agency under the  
27 provisions of the Maryland Employment Agency Act that:

28 1. Screens or refers individuals for a client's selection or  
29 rejection, as its sole business operation; and

30 2. Does not itself provide any home health care service].

31 (3) "Residential service agency" does not include:

32 (i) A home health agency that is licensed under the provisions of  
33 Subtitle 4 of this title;

1 (ii) A person required to be licensed as a home health agency under  
2 the provisions of Subtitle 4 of this title;

3 (iii) A home-based hospice care program that is licensed under the  
4 provisions of Subtitle 9 of this title;

5 (iv) A hospital that is licensed under the provisions of Subtitle 3 of  
6 this title;

7 (v) A related institution that is licensed under the provisions of  
8 Subtitle 3 of this title;

9 (vi) Personal care providers under the Medical Assistance Personal  
10 Care Program;

11 (vii) Any person practicing a health occupation that the person is  
12 authorized to practice under the Health Occupations Article;

13 (VIII) A NURSING REFERRAL SERVICE AGENCY THAT IS LICENSED  
14 UNDER SUBTITLE 4B OF THIS TITLE;

15 [(viii)] (IX) A group of persons licensed under the same title of the  
16 Health Occupations Article practicing as a business; or

17 [(ix)] (X) Residential rehabilitation services providers approved  
18 under regulations adopted by the State Mental Health Authority.

19 SUBTITLE 4B. NURSING REFERRAL SERVICE AGENCIES.

20 19-4B-01.

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
22 INDICATED.

23 (B) "LICENSE" MEANS A NURSING REFERRAL SERVICE AGENCY LICENSE.

24 (C) "LICENSED HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS  
25 LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE  
26 HEALTH CARE SERVICES.

27 (D) "NURSING REFERRAL SERVICE AGENCY" MEANS ONE OR MORE  
28 INDIVIDUALS ENGAGED IN THE BUSINESS OF SCREENING AND REFERRING  
29 LICENSED HEALTH PROFESSIONALS TO CLIENTS FOR THE PROVISION OF SKILLED  
30 NURSING SERVICES, HOME HEALTH AID SERVICES, OR OTHER HOME HEALTH CARE  
31 SERVICES IN THE RESIDENCE OF THE CLIENT.

32 19-4B-02.

33 THIS SUBTITLE DOES NOT LIMIT THE RIGHT OF ANY PERSON WHO HOLDS A  
34 LICENSE UNDER THIS ARTICLE TO ACT AS AUTHORIZED BY THAT LICENSE.

1 19-4B-03.

2 (A) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT SET STANDARDS  
3 FOR THE CARE, TREATMENT, HEALTH, SAFETY, WELFARE, AND COMFORT OF  
4 INDIVIDUALS WHO RECEIVE SERVICES THROUGH A NURSING REFERRAL SERVICE  
5 AGENCY.

6 (B) THE REGULATIONS SHALL PROVIDE FOR:

7 (1) THE ESTABLISHMENT OF NURSING REFERRAL SERVICE AGENCIES;

8 (2) THE QUALIFICATIONS FOR LICENSURE AS A NURSING REFERRAL  
9 SERVICE AGENCY;

10 (3) THE ISSUANCE OF LICENSES TO NURSING REFERRAL SERVICE  
11 AGENCIES;

12 (4) IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, THE  
13 RENEWAL OF LICENSES FOR NURSING REFERRAL SERVICE AGENCIES; AND

14 (5) A PROCEDURE FOR THE INVESTIGATION OF COMPLAINTS  
15 REGARDING NURSING REFERRAL SERVICE AGENCIES OR THE LICENSED HEALTH  
16 PROFESSIONALS SCREENED AND REFERRED BY NURSING REFERRAL SERVICE  
17 AGENCIES.

18 (C) (1) A LICENSE EXPIRES ON THE THIRD ANNIVERSARY OF ITS EFFECTIVE  
19 DATE UNLESS:

20 (I) THE DEPARTMENT SUSPENDS OR REVOKES THE LICENSE; OR

21 (II) THE LICENSE IS RENEWED FOR A 3-YEAR TERM AS PROVIDED  
22 IN THIS SECTION.

23 (2) BEFORE A LICENSE EXPIRES, A LICENSE MAY BE RENEWED FOR AN  
24 ADDITIONAL 3-YEAR TERM IF THE APPLICANT:

25 (I) OTHERWISE IS ENTITLED TO A LICENSE;

26 (II) PAYS TO THE SECRETARY THE RENEWAL FEE SET BY  
27 REGULATION; AND

28 (III) SUBMITS TO THE SECRETARY A RENEWAL APPLICATION ON  
29 THE FORM THAT THE SECRETARY REQUIRES.

30 (D) THE DEPARTMENT MAY ISSUE, DENY, SUSPEND, OR REVOKE A NURSING  
31 REFERRAL SERVICE AGENCY LICENSE IN ACCORDANCE WITH THE REGULATIONS  
32 ADOPTED UNDER THIS SUBTITLE.

33 (E) THE DEPARTMENT SHALL SET REASONABLE FEES FOR THE ISSUANCE  
34 AND RENEWAL OF LICENSES OR OTHER SERVICES PROVIDED BY THE DEPARTMENT

1 NOT TO EXCEED THE ADMINISTRATIVE COSTS OF THE LICENSURE OF NURSING  
2 REFERRAL SERVICE AGENCIES UNDER THIS SUBTITLE.

3 19-4B-04.

4 AN INDIVIDUAL SHALL BE LICENSED BY THE DEPARTMENT BEFORE  
5 OPERATING A NURSING REFERRAL SERVICE AGENCY.

6 19-4B-05.

7 TO QUALIFY FOR A LICENSE, AN APPLICANT:

8 (1) SHALL PROVE THAT THE NURSING REFERRAL SERVICE AGENCY  
9 WILL PROVIDE APPROPRIATE SCREENING AND REFERRAL SERVICES;

10 (2) SHALL MEET ANY ADDITIONAL REQUIREMENTS THAT THE  
11 DEPARTMENT ADOPTS; AND

12 (3) MAY NOT BE REQUIRED TO MEET THE REQUIREMENTS OF SUBTITLE  
13 1 OF THIS TITLE FOR CERTIFICATE OF NEED.

14 19-4B-06.

15 (A) A NURSING REFERRAL SERVICE AGENCY SHALL DEVELOP AND  
16 IMPLEMENT A PROCEDURE TO SCREEN LICENSED HEALTH PROFESSIONALS THAT  
17 INCLUDES AN INTERVIEW OF THE LICENSED HEALTH PROFESSIONAL AND  
18 VERIFICATION OF THE LICENSED HEALTH PROFESSIONAL'S:

19 (1) CRIMINAL BACKGROUND CHECK;

20 (2) CURRENT LICENSURE OR CERTIFICATION UNDER THE HEALTH  
21 OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE SERVICES;

22 (3) BASIC HEALTH STATUS;

23 (4) REFERENCES;

24 (5) EMPLOYMENT HISTORY; AND

25 (6) COMPLETION OF FEDERAL I-9 FORMS.

26 (B) A NURSING REFERRAL SERVICE AGENCY SHALL NOTIFY LICENSED  
27 HEALTH PROFESSIONALS AND CLIENTS OF THE APPROPRIATE COMPLAINT PROCESS  
28 AND THE DEPARTMENT'S COMPLAINT HOTLINE.

29 (C) A NURSING REFERRAL SERVICE AGENCY MAY NOT MAINTAIN AN  
30 EMPLOYMENT RELATIONSHIP WITH THE LICENSED HEALTH PROFESSIONALS THAT  
31 IT SCREENS AND REFERS TO CLIENTS.

1 (D) A NURSING REFERRAL SERVICE AGENCY IS NOT RESPONSIBLE FOR  
2 PAYING COMPENSATION FOR THE SERVICES RENDERED BY A LICENSED HEALTH  
3 PROFESSIONAL THAT IT SCREENS AND REFERS TO CLIENTS.

4 19-4B-07.

5 THE DEPARTMENT MAY INSPECT A NURSING REFERRAL SERVICE AGENCY TO  
6 DETERMINE WHETHER THE NURSING REFERRAL SERVICE AGENCY IS MEETING THE  
7 REQUIREMENTS OF THIS SUBTITLE.

8 19-4B-08.

9 (A) AN INDIVIDUAL MAY NOT OPERATE, ATTEMPT TO OPERATE, OR HOLD  
10 ONE'S SELF OUT AS OPERATING A NURSING REFERRAL SERVICE AGENCY UNLESS  
11 THE INDIVIDUAL IS LICENSED UNDER THIS SUBTITLE.

12 (B) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS GUILTY OF A  
13 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000  
14 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$10,000 FOR EACH SUBSEQUENT  
15 OFFENSE.

16 19-4B-09.

17 (A) AN INDIVIDUAL WHO OPERATES A NURSING REFERRAL SERVICE AGENCY  
18 IN VIOLATION OF THE REGULATIONS ADOPTED UNDER THIS SUBTITLE IS GUILTY OF  
19 A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING  
20 \$1,000.

21 (B) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST CONVICTION IS  
22 A SEPARATE OFFENSE.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
24 measure, is necessary for the immediate preservation of the public health or safety,  
25 has been passed by a ye and nay vote supported by three-fifths of all the members  
26 elected to each of the two Houses of the General Assembly, and shall take effect from  
27 the date it is enacted.